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FIFTY-FIRST SESSION

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SIXTH COMMITTEE
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held on
Wednesday, 2 April 1997
at 10 a.m.
New York

SUMMARY RECORD OF THE 57th MEETING

Chairman: Mr. YAMADA (Japan)
(Chairman of the Working Group of the Whole on the Elaboration of a Framework Convention on the Law of the Non-Navigational Uses of International Watercourses)

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AGENDA ITEM 144: CONVENTION ON THE LAW OF THE NON-NAVIGATIONAL USES OF INTERNATIONAL WATERCOURSES (continued)

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Mr. Yamada (Japan) (Chairman of the Working Group of the Whole on the Elaboration of a Framework Convention on the Law of the Non-Navigational Uses of International Watercourses) took the Chair.

The meeting was called to order at 10.25 a.m.

AGENDA ITEM 144: CONVENTION ON THE LAW OF THE NON-NAVIGATIONAL USES OF INTERNATIONAL WATERCOURSES (continued)

Elaboration of a framework convention on the law of the non-navigational uses of international watercourses on the basis of the draft articles adopted by the International Law Commission in the light of the written comments and observations of States and views expressed in the debate at the forty-ninth session

Paragraph 2 of article 8 of the draft Convention

1. Mr. WELBERTS (Germany), co-sponsor of the proposal contained in document A/C.6/51/NUW/WG/CRP.84/Rev.1, submitted the proposal for the consideration of the Working Group.

2. Ms. GAO Yanping (China) doubted that there was any need to include that paragraph in the article, although she was not opposed to its inclusion in principle. It seemed more logical and reasonable to her delegation to replace the word "useful" in the second line by the word "necessary".

3. Mr. SVIRIDOV (Russian Federation) said that both in the consultations and in the current meeting doubts had been raised about the wisdom of including that paragraph in the Convention, since its content coincided in part with that of paragraph 24 of article 1, which had already been adopted.

4. Mr. WELBERTS (Germany) said that article 8 covered various aspects of cooperation between joint mechanisms or commissions, while article 24 was limited to the management of international watercourses. The coincidence would depend on the mandate of the joint mechanisms or commissions, according to whether or not they had been entrusted with management functions. On the other hand, if China's proposal was the only obstacle to the adoption of the paragraph, then Germany would not oppose it.

5. Mr. SALINAS (Chile) and Mr. PRANDLER (Hungary) said that they too shared the position taken by Germany.

6. Mr. SOW (Mali) expressed satisfaction with the wording of the paragraph because of the usefulness of the mechanisms which it provided to Mali and other riparian States of major rivers. In his view, the paragraph was related to article 24. With regard to China's proposal, Mali shared the position taken by Germany.

7. Mr. CHAR (India) said that China's proposal would improve the drafting of the paragraph, which should be included in article 8.

8. Mr. KASME (Syrian Arab Republic) accepted China's proposal and considered that the paragraph should be included in article 8. On the other hand, so as not to limit the attributes of the joint commissions, he proposed the addition of the words "questions such as" before the words "relevant measures", in order to cover such questions as the settlement of disputes and the distribution or use of waters. He wondered whether the other sponsors of the proposal would be prepared to accept that addition.

9. Mr. AMARE (Ethiopia) said that the inclusion of paragraph 2 in article 8 would appear to limit the scope of cooperation to technical cooperation activities and it would be better to include the paragraph in article 24. If the paragraph had to be included in part II, it should perhaps be amended in such a way that cooperation would cover aspects related to the distribution of water.

10. The CHAIRMAN observed that paragraph 2 of article 8 in the version submitted in document CRP.84/Rev.1, with the amendment proposed by China, was acceptable to several co-sponsors. He took it that the Working Group wished to approve that version of paragraph 2 of article 8, taking note of the reservation entered by Ethiopia.

11. It was so decided.

Paragraph 10 of article 10

12. Mr. VORSTER (South Africa), coordinator of the informal consultations on the paragraph, presented a report on the paragraph. Since none of the possible formulations of the paragraph had gained general acceptance, he had concluded that the majority of members were of the view that the initial text should be retained.

13. Mr. SABEL (Israel) wished to place on record the importance which a number of delegations, in particular the Netherlands (CRP.11), India (CRP.28), the Russian Federation (CRP.34) and South Africa (CRP.40), had attached to the question of drinking water in various sessional documents. He noted that there had been no objections among the delegations to any attempt to stress the importance of that question, except that perhaps some delegations had preferred to stress other aspects.

14. The CHAIRMAN said that he took it that the Working Group wished to adopt ad referendum paragraph 2 of article 10.

15. It was so decided.

16. Mr. SVIRIDOV (Russian Federation) said that it was not clear where and how the commentary of the International Law Commission would be recorded. It was a very important issue and it did not seem appropriate for the commentary to be placed in a footnote, as was currently the case.

17. The CHAIRMAN recalled that on several occasions the formula of a mutual understanding or an agreed statement had been used in such cases and that the Chairman of the Drafting Group had already commented on the matter. The format

of such a statement and where it would be placed remained to be determined. There were other statements that would need to be addressed. In some cases, agreement had already been reached on a text, while in others agreement was yet to be reached. He requested delegations to submit the texts that were being negotiated so that a decision could be made on where and how to record them.

18. Mr. SVIRIDOV (Russian Federation) said that the best way to do so would be to follow the procedure used by the Drafting Committee, namely, to include the commentary in the report of the Working Group to the General Assembly and not in a note or a statement. Given the importance of the item and the difficulties which it had raised during the Working Group's deliberations, it would be advisable to continue the consideration of the item in informal consultations.

19. Mr. JAAFAR (Lebanon) said that his delegation supported the text, although it insisted on the addition proposed by his delegation to the representative of South Africa, who was the coordinator of the consultations on paragraph 2 of article 10.

20. The CHAIRMAN recalled that the paragraph had been adopted ad referendum on the understanding that there would be a statement whose final text had to be agreed upon and that the proposal of the delegation of Lebanon had been included in the report of the coordinator, thereby ensuring that Lebanon's position had been placed on record.

Paragraph 1 of article 10

21. The CHAIRMAN, referring to the proposal of Ethiopia to delete the words "or custom", asked whether it would be possible to place on record the Ethiopian delegation's position and adopt ad referendum the text in its current form.

22. Mr. AMARE (Ethiopia) said that several delegations were in agreement with the proposal to delete the word "custom", which would create confusion and disrupt the balance that had been achieved in article 6. His delegation had serious reservations about the use of that word, which was extremely difficult to define in the context of the article in question.

23. Mr. MANONGI (United Republic of Tanzania), later joined by the representatives of Turkey and Uganda, also expressed his reservations about the inclusion of the word "custom", since in his view there were no established customary rules in that area.

24. Mr. ROSENSTOCK (Expert Consultant) referred to the commentary of the International Law Commission on the meaning of the word in the context of paragraph 1 of article 10: "The word 'custom' applies to situations in which there may be no 'agreement' between watercourse States but where, by tradition or in practice, they have given priority to a particular use" (A/49/10, p. 257). In no way was it intended to mean customary rules.

25. Mr. SALINAS (Chile) said that the word "custom", as used in the paragraph, might be ambiguous, since if "custom" was used as an alternative to "agreement", it would be interpreted as referring to "customary rules". In order to avoid confusion, the term "practice" should be used.

26. The CHAIRMAN said that he took it that the Working Group wished to adopt ad referendum, subject to the inclusion of the reservations that had been expressed, the current text of paragraph 1 of article 10.

27. It was so decided.

28. Ms. FLORES (Mexico), reporting orally on the results of the consultations on articles 5 and 6, said that in relation to article 5, three main aspects had been considered: (1) the inclusion of the terms "sustainable" and "ecosystems" in paragraph 1; (2) the definition of the concept of optimal utilization, and (3) a proposal by the representative of Egypt to make a more specific link between articles 5 and 7. On the first question, it had been felt that the decision adopted about the inclusion of those terms in article 5 would not necessarily affect their inclusion in other parts of the text. It had been considered provisionally that the word "ecosystems" could be eliminated provided that it was retained in article 20, and that the words "and sustainable" could be retained in article 5, although five delegations had expressed reservations in that respect. On the second question, it had been decided that a declaration would be made in the records of the Working Group to define what was meant by optimal utilization, on the basis of the relevant commentary of the International Law Commission. With regard to the proposal by the representative of Egypt, it was felt that it should be set aside until the final text of article 7 was available. With regard to article 6, consideration had been given to the inclusion of new factors and the possibility of including the term "pedological" in paragraph (a). Various proposals had been made for the inclusion of new factors, although there was a trend towards not changing the text. No decision had been taken in that respect, although the delegations which had made proposals had shown flexibility and were prepared not to insist on them as long as the current text was retained. The consideration of the term "pedological" had not been concluded.

29. Mr. NUSSBAUM (Canada), reporting orally on the results of the consultations on article 7, said that from the outset, the proposal which had received the most support had been the text appearing in document A/C.6/51/NUW/WG/CRP.72. Consideration had been given to the possibility of making changes in order to gain the support of the delegations which had expressed reservations. It had become apparent that the text was a balanced compromise. However, a number of delegations felt that changes needed to be made. Some of those delegations had proposed useful amendments to address those concerns. The consultations had shown that the balance which had been achieved was precarious, since many delegations had accepted the text reluctantly. On such a delicate matter, compromise solutions were not only desirable but necessary. He urged delegations to consider the text very carefully; the text should serve as a basis for achieving consensus, since delegations had widely divergent interests. It would be useful to consider article 7 in the context of the Convention as a whole. If the different parts were considered as well as the relationship of each part to the whole, it would be possible to achieve true consensus.

30. The CHAIRMAN, referring to the report by the representative of Mexico, recalled that some delegations had agreed to delete the word "ecosystems" from paragraph 1 of the preamble as long as it was retained in article 20. When the Working Group had considered article 20, it had come out in favour of retaining

the word in that article. The representative of China, however, had suggested that the word "ecosystems" should be replaced by "ecological balance". Although many delegations were in favour of retaining the word "ecosystems", there had been broad support for the Chinese proposal. The two groups should hold intensive consultations in order to find an acceptable solution. To that end, Mr. Morshed (Bangladesh), an expert on watercourses, had been asked to help, and he would provide assistance in the consultations regarding article 20 and also article 22.

31. With regard to articles 5, 6, 7 and 33, which were closely interlinked, delegations had indicated that they could not take a final decision on any of the articles without knowing the results of the consultations on the other articles, so that they wanted to have an opportunity to consider them together. Since the four articles could not be considered at the same time, perhaps articles 5, 6 and 7 could be considered together, bearing it in mind that any decision taken would depend on the results on the consultations on article 33. In view of the limited time available, agreement must be reached on the substance of those articles. A political decision should be taken not only for the benefit of each of the countries but also for the sake of the peace and stability of watercourse systems. To that end, he called for the cooperation and contribution of all members of the Working Group in achieving a viable convention which would be acceptable to the majority of watercourse States. Informal consultations could therefore be held in order to reach agreement on the substance of articles 5, 6 and 7 and the coordinators could continue their coordinating work.

32. Mr. BOCALANDRO (Argentina) asked for informal consultations to be held so that progress could be made.

33. Mr. SALINAS (Chile), supported by Mr. CAFLISCH (Observer for Switzerland) and Ms. FAHMI (Egypt), said that informal consultations must be held, coordinated by the coordinators of articles 5, 6 and 7.

34. Mr. ROSENSTOCK (Expert Consultant) said that the articles had to be considered one by one, and noted that what was accepted would always be provisional and would be approved later ad referendum. On the basis of the majority opinion expressed in the consultations which had been held, there was general agreement about accepting the version of article 5 drafted by the International Law Commission, adding the word "sustainable" and deleting the word "ecosystems". That acceptance would be provisional in nature, depending on what was done with the other articles. With regard to article 6, most delegations were in favour of leaving it in its current form, deleting the word "pedological". If those versions of articles 5 and 6 could be regarded as working hypotheses, the Working Group could proceed to consider the results of the consultations conducted by the coordinator on article 7. If consensus could be reached about that article, considerable progress would have been made.

35. Mr. HARRIS (United States of America), reporting orally on the consultations conducted on article 3, said that, with regard to paragraph 2 of that article, there were three possible options as to the manner of treating the question of harmonizing existing watercourse agreements with the basic principles of the Convention. The first was to include the word "should", the

second was that there should be no article on the question, and the third was that there should be an article, but that it should include the word "may". The views of 52 delegations had been sought, and 20 of them had been in favour of the third option. To the question of whether they would join in a consensus on that option, 50 delegations had responded in the affirmative. Consequently, the paragraph should be drafted with the word "may", and would consist of the draft to be presented as a result of the consultations, which would also include a slight technical change in the drafting.

36. With regard to article 3, paragraph 4, there were two variants appearing in brackets, the first, "[provided that the agreement does not adversely affect]" and the second, "[except insofar as the agreement adversely affects]". Of the 52 delegations consulted, most had been in favour of the second variant. Consequently, a draft of the paragraph including that variant would be submitted.

37. With regard to paragraph 6, it was suggested that a small drafting change should be made which had the support of both the delegation which had first suggested its inclusion and the delegation which had expressed concern about it. Since the change would not affect the meaning of the paragraph, it would be presented in that form in the report.

38. Mr. GONZÁLEZ (France) said that in the French text of article 3, paragraph 4, the second phrase in brackets should read as follows: "dans la mesure où cet accord ne porte pas atteinte".

The meeting rose at 11.55 a.m.

UNITED NATIONS

General Assembly

FIFTY-FIRST SESSION

Official Records

SIXTH COMMITTEE
58th meeting
held on
Wednesday, 2 April 1997
at 3 p.m.
New York

SUMMARY RECORD OF THE 58th MEETING

Chairman: Mr. YAMADA (Japan)
(Chairman of the Working Group of the Whole on the Elaboration of a Framework Convention on the Law of the Non-Navigational Uses of International Watercourses)

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AGENDA ITEM 144: CONVENTION ON THE LAW OF THE NON-NAVIGATIONAL USES OF INTERNATIONAL WATERCOURSES (continued)

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Mr. Yamada (Chairman of the Working Group of the Whole on the Elaboration of a Framework Convention on the Law of the Non-Navigational Uses of International Watercourses) took the Chair.

The meeting was called to order at 3.20 p.m.

AGENDA ITEM 144: CONVENTION ON THE LAW OF THE NON-NAVIGATIONAL USES OF INTERNATIONAL WATERCOURSES (continued) (A/49/10, A/C.6/51/NUW/WG/L.1/Rev.1 and Add.1, A/C.6/51/NUW/WG/CRP.57, A/C.6/51/NUW/WG/CRP.81 and A/C.6/51/NUW/WG/CRP.89)

1. The CHAIRMAN suggested that the Working Group consider outstanding provisions, starting with articles 2, 3, 4 and 32. In response to requests for clarification from Mr. PFIRTER (Switzerland) and Mr. SVIRIDOV (the Russian Federation), he said that consultations would continue on articles 5, 6 and 7, taken together and that article 33 would be considered once the member responsible for coordinating it had submitted his report.

Article 2, subparagraph (a)

2. The CHAIRMAN said that the Egyptian proposal with regard to the term "groundwater" (A/C.6/51/NUW/WG/CRP.57) raised a highly technical issue but had no bearing on the substance. Several delegations were also opposed to including the concept of "groundwater" and their positions had been duly recorded. He therefore suggested that subparagraph (a) should be adopted ad referendum and that the technical point raised by Egypt should be taken up later.

3. It was so decided.

Article 2, subparagraph (b)

4. The CHAIRMAN recalled that one delegation had expressed reservations with regard to the term "international watercourse"; those reservations had been duly recorded. He suggested that subparagraph (b) should be adopted ad referendum.

5. It was so decided.

Article 2, subparagraph (c)

6. The CHAIRMAN recalled that the Netherlands, on behalf of the European Union and the United States of America, had put forward a proposal defining the term "watercourse State" in subparagraph (c) and adding a new subparagraph (d) that would define the term "regional economic integration organization" (A/C.6/51/NUW/WG/CRP.81). He suggested that the Working Group start by considering the first part of that proposal.

7. Mr. NGUYEN QUY BINH (Viet Nam) said that the term "Party to this Convention" might unduly limit the scope of the definition, since international watercourses might be situated in the territory of States that were not parties to the Convention.

8. Mr. HARRIS (United States of America) said that the convention imposed a number of obligations on watercourse States in exchange for a number of rights. Given that some, but not all, of its provisions reflected customary international law, omitting the term "Party to this Convention" would have the perverse effect of inviting States not to ratify the convention, as they would then be able to enjoy its benefits without assuming the corresponding obligation.

9. Mr. LAVALLE (Guatemala) said that the proposed wording might create the impression that "Party to this Convention" meant States and federations of States, whereas it was intended to mean States and regional economic integration organizations. It might be appropriate to remove that ambiguity by drawing on the definition of State party contained in the Vienna Convention on the Law of Treaties.

10. Mr. KASME (Syrian Arab Republic) said that the term "Party to this Convention" was superfluous, since subparagraph (c) defined "watercourse State" in its objective, geographical sense. A watercourse State, whether or not it was a party to the convention, remained subject to the obligations under international law that resulted from its geographical situation.

11. Mr. PAZARCI (Turkey) endorsed the statement by the United States representative and pointed out that paragraph 6 of article 3 reaffirmed the well-established rule whereby a State that was not a party to an agreement was not bound by it.

12. Mr. PREDA (Romania) proposed that subparagraph (c) should be amended as follows: "watercourse State" means a State or member States of an international economic organization in whose territory ...".

13. Mr. ROSENSTOCK (Expert Consultant) said that the sole purpose of the new wording proposed for subparagraph (c) was to ensure that a State that was not a Party to the Convention did not claim rights under the convention when it was not bound by any of the corresponding obligations. The rights of such a State under international law were not at issue. The proposed change was particularly sensible because, according to the final clauses already agreed upon by the Working Group, a regional economic integration organization could become a party to the convention even if none of its member States was a party.

14. Mr. AL-WITRI (Iraq) said that the term "watercourse State" had been defined on the basis of purely geographical criteria related to the presence of part of a watercourse in the territory of that State and not to whether or not that State was a party to the convention. Watercourse States were in any case subject to the rules of international law governing international watercourses. The addition of the term "Party to this Convention" was therefore inappropriate and only made the definition more vague, with all the attendant consequences in terms of obligations, which might then be evaded by not becoming a party to the convention.

15. Mr. NUSSBAUM (Canada) agreed with the argument put forward by the United States representative and the Expert Consultant and supported the changes proposed by the Netherlands on behalf of the European Union and the United

States. He further suggested that commas should be inserted before and after the phrase "or, where applicable, ... whose member States".

16. The CHAIRMAN said that the point was to define the concept of watercourse State within the meaning of the Convention under consideration and not within that of other instruments.

17. Mrs. LADGHAM (Tunisia), referring to paragraph 14 of the commentary of the International Law Commission (ILC), said that the definition in subparagraph (c) was clearly based on a geographic criterion.

18. Mr. NGUYEN QUY BINH (Viet Nam) said that the proposed amendments were understandable as far as the rights provided for by the Convention were concerned, but less so where the obligations placed on States which were not parties, including the obligation not to cause harm, were concerned.

19. Mr. AMARE (Ethiopia) said that, since the Convention had to establish norms and principles applicable to all States, whether or not they were parties to the Convention, it was preferable to retain the descriptive geographical definition of watercourse State.

20. Mr. ROSENSTOCK (Expert Consultant) said that the concern was to avoid creating a situation where a State would be compelled as a party to the Convention to grant rights, such as a six-month advance notification, to another State which, because it was not a party to the Convention, would not be bound by the same obligation. Noting that such a situation was unacceptable to Canada and the United States of America, which had maintained excellent relations with each other in that field for nearly a century, he wondered how States which did not have comparable relations with their own neighbours could press for the adoption of a provision which was bound to lead to such a situation. While certain principles set out in the Convention were part of customary international law, the Convention also contained very many specific and important provisions which could not be construed as part of such law and which should not benefit States that were not bound by the corresponding obligations.

21. Mrs. VARGAS de LOSADA (Colombia) endorsed the idea contained in the proposal of the Netherlands and United States delegations. However, that proposal could be improved upon if it was stated, for example, that the term "watercourse State" meant a State party to the Convention in whose territory a watercourse was situated or, in the case of a regional economic integration organization, when part of the watercourse flowed through one or more of the member States of such organization. Any ambiguity would be dispelled by specifying that they were regional economic integration organizations; that would facilitate the understanding of the article.

22. Mr. KASME (Syrian Arab Republic) thanked the Expert Consultant for having recalled in particular that a State not a party was still subject to international law. His delegation wished to retain the original wording of the article in order to make it clear that a State which was not bound by the Convention could nevertheless not act as it pleased. Moreover, the Working Group was engaged in codifying international law and therefore could not say that a State which was not a party to the Convention should not enjoy any

rights. Objectively speaking, such a State remained a watercourse State. The term "party to the present Convention" could have that negative effect, but his delegation would not make a major issue of the matter.

23. Mr. SALINAS (Chile) endorsed the proposal of the United States delegation as well as the Colombian delegation's amendment.

24. Mr. VORSTER (South Africa) said that his delegation was satisfied with the explanations given by the representative of the United States and by the Expert Consultant and wholly endorsed their views.

25. Mr. AL-WITRI (Iraq), recalling that the Expert Consultant of the Working Group was also a Special Rapporteur of the International Law Commission on the topic of international watercourses, said that it was the Commission which had stated in its report that the definition in subparagraph (c) relied on a geographical criterion and was not linked to the fact of being a State party to the Convention. In any case, should the proposed amendment be adopted, the Convention was doomed to failure because States would refrain from acceding to it in order not to assume any obligations.

26. Mr. PAZARCI (Turkey) said that the strict geographical definition of the term "watercourse State" was not sufficient. It was true that a State might be a watercourse State without being a party to the Convention, but the States parties were under the obligation to grant to third States the rights provided for in the Convention precisely because the watercourse was geographically part of their territory. He therefore found the proposals of the Netherlands and United States delegations very realistic and fully endorsed the view expressed by the Expert Consultant on that subject. In that connection, he recalled the provisions of the Vienna Convention on the Law of Treaties relating to the express consent of third States in respect of rights and obligations provided for under conventions.

27. The CHAIRMAN said that the views of delegations would be duly reflected in the summary record and requested the representatives of Colombia and of the United States of America to hold consultations with all interested delegations in order to reach agreement on subparagraph (c). In response to a request for clarification from the representative of Viet Nam, he said that the consultations would also cover the original text prepared by ILC. He then suggested that the Committee should take up subparagraph (d) proposed by the Netherlands and United States delegations and adopt it ad referendum, on the understanding that the consultations would continue on the other definitions proposed by delegations, including that of the Russian Federation.

28. It was so decided.

Article 3

29. Article 3, paragraphs 1 (A/C.6/51/NUW/WG/L.1/Rev.1), 2 (A/C.6/51/NUW/WG/CRP.89) and 3 (A/C.6/51/NUW/WG/L.1/Rev.1/Add.1), were adopted ad referendum.

30. The CHAIRMAN, turning to article 3, paragraph 4 (A/C.6/51/NUW/CRP.89), said that the Coordinator had amended it by inserting the words "an entire watercourse or" after the words "Such an agreement may be entered into with respect to".

31. Mr. RAO (India) said that the use of the phrase "except with their express consent" raised a problem because the words "to a significant extent", which conveyed the concept of a threshold, were used in the same paragraph. Since that concept was central to article 7, the text of the two articles should be harmonized to the extent possible. The Expert Consultant might wish to indicate whether the same threshold of seriousness applied in both cases.

32. Mr. ROSENSTOCK (Expert Consultant) said that, according to the ILC commentary, the threshold of significant extent was lower than that of significant harm.

33. Mr. SVIRIDOV (Russian Federation) proposed replacing the words "except with their express consent" by "without the express consent"; that wording had, as far as he could recall, been preferred by the Working Group and it did not change the general meaning of the article.

34. Mr. LAMMERS (Chairman of the Drafting Committee) said that he saw no reason why the text should not be so amended. He therefore proposed that the wording contained in footnote 6 to document A/C.6/51/NUW/WG/L.1/Rev.1 should be adopted.

35. Mr. RAO (India) said that the problem was that considerable emphasis was placed on the concept of express consent, whereas the draft prepared by the International Law Commission simply said that the interests of another State should not be diversely affected. That issue should be discussed when article 7 was considered. However, his delegation would not insist on that point if no other delegation wished to do so.

36. Mr. GONZALEZ (France) remarked that, in French, it would be preferable to retain the original wording for reasons of style, but that the meaning was the same in both cases.

37. Paragraph 4, as amended in accordance with footnote 6, was adopted ad referendum.

38. Paragraph 5 was adopted ad referendum.

39. THE CHAIRMAN said that, in the English version of the coordinator's report (A/C.6/51/NUW/WG/CRP.89), paragraph 6 of article 3 was mistakenly numbered "paragraph 5".

40. Mr. HARRIS, (United States of America), responding to Mr. OBEIDAT (Jordan) who had asked why paragraph 6 used the term "international agreement" when elsewhere the term "agreement" was judged sufficient, observed that deleting "international" would not affect the meaning of the text.

41. Paragraph 6, as amended by Jordan, was adopted ad referendum.

Article 4

42. The CHAIRMAN recalled that paragraph 1 of article 4 had been adopted ad referendum and that the Russian delegation had proposed that, in paragraph 2, the phrase "whose use of an international watercourse may be affected" should be replaced by "whose interests in the use of an international watercourse may be affected" (A/C.6/NUW/WG/CRP.80).

43. Mr. HARRIS (United States of America) expressed concern that the amendment proposed by the Russian Federation might make the text more vague and extend its scope unduly, in that non-watercourse States might be able to invoke the convention because of their interests in the use of a watercourse.

44. Mr. CAFLISCH (Switzerland), Mr. PULVENIS (Venezuela) and Mr. PATRIOTA (Brazil) supported the statement by the United States representative.

45. Mr. MANONCI (United Republic of Tanzania) pointed out that the text under consideration dealt only with actual uses, whereas the Russian amendment also covered potential uses and should therefore be considered.

46. Mr. LOIBL (Austria), Mr. PAZARCI (Turkey), Mr. AMER (Egypt), Mr. YAHAYA (Malaysia), Mr. NGUYEN QUY BINH (Viet Nam) and Mr. CHIRANOND (Thailand) said that they were in favour of adopting the text of paragraph 2 without amendment. The representative of Turkey further stated that the text as it stood protected rights, while the text proposed by the Russian delegation would protect interests, with all the problems which that posed in terms of the definition and legitimacy of such interests.

47. Mr. SVIRIDOV (Russian Federation) expressed surprise at the opposition encountered by his delegation's proposal, which had been purely editorial. He deferred to the general will.

48. The CHAIRMAN said that the Russian delegation's position would be duly recorded in the summary record. He suggested that article 4, paragraph 2, should be adopted ad referendum.

49. It was so decided.

Article 32 (A/C.6/51/NUW/WG/L.1/Rev.1 and A/49/10)

50. The CHAIRMAN recalled that at the end of the previous debate on article 32, most delegations had wanted to revert to the original text drafted by the International Law Commission, and two delegations had wanted to consult their Governments if the Working Group was to proceed on that new basis.

51. Mr. SVIRIDOV (Russian Federation) recalled that, at the previous session, his delegation had raised an objection of principle to the inclusion of article 32, the content of which seemed to be a matter for bilateral relations. Since that objection had not been sustained, his delegation had proposed a new text for article 32, also without success. In the Drafting Committee, the wording proposed by the International Law Commission had been amended to meet the concerns of numerous delegations. In a spirit of compromise, his delegation

had accepted the amended text proposed by the Drafting Committee. In view of the many concessions that it had made, his delegation hoped that all delegations would show a spirit of compromise and that the version of article 32 proposed by the Drafting Committee would be adopted.

52. The CHAIRMAN said that his remarks had summarized the situation existing at the end of the most recent meeting of the Working Group at which article 32 had been considered.

53. Mr. MANONCI (United Republic of Tanzania) announced that his delegation also wished to reserve its position on article 32. He was concerned that the text proposed by the International Law Commission broadened the territorial scope for bringing civil action. That was particularly unjustified in view of the fact that the regime of civil liability for transboundary harm was being studied in the context of the drafting of a text on international liability for injurious consequences arising out of acts not prohibited by international law.

54. Ms. VARGAS de LOSADA (Colombia) maintained the reservation that she had expressed within the Drafting Committee.

55. Mr. RAO (India) and Mr. AMARE (Ethiopia) maintained their reservations to article 32 as a whole.

56. Ms. GAO Yanping (China) recalled that the Drafting Committee had considered the phrase "in its territory" to be preferable to "under its jurisdiction". She therefore proposed that the original text drafted by the International Law Commission should be amended accordingly.

57. Mr. ROSENSTOCK (Expert Consultant) pointed out that, in many contexts, "jurisdiction" was preferable to "territory", but not in the present case. The proposed amendment did not therefore pose any problem.

58. Mr. HABIYAREMYE (Rwanda) said that his delegation supported the Russian proposal and maintained its reservations with regard to article 32.

59. The CHAIRMAN suggested that the wording proposed by the International Law Commission, as amended by China, should be adopted.

60. It was so decided.

61. Mr. SVIRIDOV (Russian Federation) expressed regret that the gavel had prevailed over compromise, and reiterated that his delegation reserved its position with regard to the article just adopted.

The meeting rose at 5.05 p.m.